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The Honorable James L. Robart

5 *Attorneys for Cherokee General Corporation and Hartford Fire Insurance Company*

6
7 IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 UNITED STATES OF AMERICA, for the Use
9 and Benefit of PINNACLE CRUSHING &
CONSTRUCTION, LLC a Washington limited
10 liability company,

No. 2:17-cv-01908-JLR

11 Plaintiffs,

STIPULATED PROTECTIVE ORDER

12 vs.

13 HARTFORD FIRE INSURANCE COMPANY, a
Connecticut corporation,

14 Defendant.

15 UNITED STATES OF AMERICA, for the Use
16 and Benefit of SCI INFRASTRUCTURE LLC;
and SCI INFRASTRUCTURE LLC, a Washington
17 limited liability company,

18 Plaintiffs,

19 vs.

20 CHEROKEE GENERAL CORPORATION, an
Oregon corporation; and HARTFORD FIRE
21 INSURANCE COMPANY, a Connecticut
corporation,

22 Defendants.

23 STIPULATED PROTECTIVE ORDER - 1
Case No. 2:17-cv-01908-JLR
4810-5960-8441 v.1 0105126-000003

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STIPULATED PROTECTIVE ORDER

PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. PROTECTED MATERIAL – “CONFIDENTIAL” AND “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

12 "Protected Material" includes both "Confidential" material and "Confidential – Attorneys
13 Eyes Only" material.

“Confidential” materials shall include the following documents and tangible things produced or otherwise exchanged:

- a) the financial books and records of the producing party and information pertaining to those financial books and records;
- b) information about the revenues, costs, expenses, profits and losses of the producing party;
- c) information about the producing party's short- and long-term business plans;
- d) confidential information that the producing party has regarding its customers, competitors, suppliers, vendors, and subcontractors;

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- 1 e) any information related to the producing party's budgets, estimates, bid documents,
- 2 related to the construction project that is the subject of this lawsuit;
- 3 f) any information that the producing party is obligated by contract or state or federal
- 4 law to keep confidential;
- 5 g) any other information the producing party's business competitors could use to obtain a
- 6 business or legal advantage over the producing party; and
- 7 h) tax, accounting, or financial information.

8 “Confidential-Attorneys’ Eyes Only” material shall include all or any part of any

9 Confidential material, the disclosure of which to another party or non-party entity, in the view of
10 the designating party, would create a substantial risk of serious harm that could not be avoided by
11 less restrictive means.

12 By designating materials as “Confidential-Attorneys’ Eyes Only,” the designating parties
13 and their respective counsel represent that they have a good faith belief that the materials so
14 designated are not only Confidential but also contain extremely sensitive and confidential
15 proprietary, commercial, or personal information, including, without limitation, pricing and
16 contract information, trade secret, and/or competitively sensitive commercial information relating
17 to a party or third parties that could be used to the direct and material detriment of the designating
18 party or any third party not involved in this litigation.

19 3. SCOPE

20 The protections conferred by this agreement cover not only Protected Material (as defined
21 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
22 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,
23 or presentations by parties or their counsel that might reveal confidential material.

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1 However, the protections conferred by this agreement do not cover information that is in
2 the public domain or becomes part of the public domain through trial or otherwise.
3

4. **ACCESS TO AND USE OF "CONFIDENTIAL" AND "CONFIDENTIAL-**
ATTORNEYS' EYES ONLY" MATERIAL

4.1 **Basic Principles.** A receiving party may use Protected Material that is disclosed or
5 produced by another party or by a non-party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Protected Material may be disclosed only to the
7 categories of persons and under the conditions described in this agreement. Protected Material
8 must be stored and maintained by a receiving party at a location and in a secure manner that
9 ensures that access is limited to the persons authorized under this agreement.

10. 4.2 **Disclosure of "Protected Material" or Items.** Unless otherwise ordered by the court
11 or permitted in writing by the designating party, a receiving party may disclose any Protected
12 Material only to:

13. (a) the receiving party's counsel of record in this action, as well as employees
14 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

15. (b) the officers, directors, and employees (including in house counsel) of the
16 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
17 agree that a particular document or material produced is for Attorney's Eyes Only and is so
18 designated;

19. (c) experts and consultants to whom disclosure is reasonably necessary for this
20 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

21. (d) the court, court personnel, and court reporters and their staff;

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1 (e) copy or imaging services retained by counsel to assist in the duplication of
2 confidential material, provided that counsel for the party retaining the copy or imaging service
3 instructs the service not to disclose any confidential material to third parties and to immediately
4 return all originals and copies of any confidential material;

5 (f) during their depositions, witnesses in the action to whom disclosure is
6 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
7 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
8 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
9 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
10 under this agreement;

11 (g) the author or recipient of a document containing the information or a
12 custodian or other person who otherwise possessed or knew the information.

13 4.3 Disclosure of "CONFIDENTIAL-ATTORNEYS' EYES ONLY" Information or
14 Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a
15 receiving party may disclose any CONFIDENTIAL-ATTORNEYS' EYES ONLY information or
16 items only to:

17 (a) the receiving party's counsel of record in this action, as well as employees
18 of counsel to whom it is reasonably necessary to disclose the information for this litigation, with
19 the understanding that all such employees are bound by the terms of this Order with respect to
20 such CONFIDENTIAL-ATTORNEYS' EYES ONLY material;

21 (b) for a corporate party, in-house counsel of the receiving party to whom
22 disclosure is reasonably necessary for this litigation, with the understanding that such in-house
23

1 counsel is bound by the terms of this Protective Order with respect to such Confidential-

2 Attorneys' Eyes Only material;

3 (c) experts and consultants to whom disclosure is reasonably necessary for this
litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

4 (d) the court, court personnel, and court reporters and their staff;

5 (e) copy or imaging services retained by counsel to assist in the duplication of

6 CONFIDENTIAL-ATTORNEYS' EYES ONLY material, provided that counsel for the party
7 retaining the copy or imaging service instructs the service not to disclose any CONFIDENTIAL-
8 ATTORNEYS' EYES ONLY material to third parties and to immediately return all originals and
9 copies of any CONFIDENTIAL-ATTORNEYS' EYES ONLY material;

10 (f) during their depositions, witnesses in the action to whom disclosure is
11 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
12 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
13 transcribed deposition testimony or exhibits to depositions that reveal CONFIDENTIAL-
14 ATTORNEYS' EYES ONLY material must be separately bound by the court reporter and may
15 not be disclosed to anyone except as permitted under this agreement;

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information.

18 4.4 Filing Protected Material. Before filing Protected Material or discussing or
19 referencing such material in court filings, the filing party shall confer with the designating party to
20 determine whether the designating party will remove the confidential designation, whether the
21 document can be redacted, or whether a motion to seal or stipulation and proposed order is
22 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the

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1 standards that will be applied when a party seeks permission from the court to file material under
2 seal.
3

5. **DESIGNATING PROTECTED MATERIAL**

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
or non-party that designates information or items for protection under this agreement must take
5 care to limit any such designation to specific material that qualifies under the appropriate
6 standards. The designating party must designate for protection only those parts of material,
7 documents, items, or oral or written communications that qualify, so that other portions of the
8 material, documents, items, or communications for which protection is not warranted are not
9 swept unjustifiably within the ambit of this agreement.
10

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
12 unnecessarily encumber or delay the case development process or to impose unnecessary
13 expenses and burdens on other parties) expose the designating party to sanctions.
14

15 If it comes to a designating party's attention that information or items that it designated for
protection do not qualify for protection, the designating party must promptly notify all other
16 parties that it is withdrawing the mistaken designation.
17

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this
agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
19 ordered, disclosure or discovery material that qualifies for protection under this agreement must
be clearly so designated before or when the material is disclosed or produced.
20

21 (a) Information in documentary form: (e.g., paper or electronic documents and
deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
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the designating party must affix the word "CONFIDENTIAL" or "CONFIDENTIAL-
ATTORNEYS' EYES ONLY" to each page that contains Protected Material. If only a portion or
portions of the material on a page qualifies for protection, the producing party also must clearly
identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties
and any participating non-parties must identify on the record, during the deposition or other
pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
transcript, or exhibits thereto, as protected. If a party or non-party desires to protect Protected
Material at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place
on the exterior of the container or containers in which the information or item is stored the words
"CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY." If only a portion or
portions of the information or item warrant protection, the producing party, to the extent
practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
designate qualified information or items does not, standing alone, waive the designating party's
right to secure protection under this agreement for such material. Upon timely correction of a
designation, the receiving party must make reasonable efforts to ensure that the material is treated
in accordance with the provisions of this agreement.

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6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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2 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
3 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
5 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
6 challenge a confidentiality designation by electing not to mount a challenge promptly after the
original designation is disclosed.

7
8 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
9 regarding confidential designations without court involvement. Any motion regarding
10 confidential designations or for a protective order must include a certification, in the motion or in
11 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference
12 with other affected parties in an effort to resolve the dispute without court action. The
13 certification must list the date, manner, and participants to the conference. A good faith effort to
confer requires a face-to-face meeting or a telephone conference.

14
15 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
16 intervention, the designating party may file and serve a motion to retain confidentiality under
17 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
18 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
19 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
other parties) may expose the challenging party to sanctions. All parties shall continue to
20 maintain the material in question as protected until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
1 LITIGATION

2 If a party is served with a subpoena or a court order issued in other litigation that compels
3 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
4 "CONFIDENTIAL-ATTORNEYS' EYES ONLY," that party must:

5 (a) promptly notify the designating party in writing and include a copy of the
6 subpoena or court order;

7 (b) promptly notify in writing the party who caused the subpoena or order to
8 issue in the other litigation that some or all of the material covered by the subpoena or order is
9 subject to this agreement. Such notification shall include a copy of this agreement; and

10 (c) cooperate with respect to all reasonable procedures sought to be pursued by
11 the designating party whose confidential material may be affected.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

13 If a receiving party learns that, by inadvertence or otherwise, it has disclosed Protected
14 Material to any person or in any circumstance not authorized under this agreement, the receiving
15 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
16 (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
17 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
18 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
19 Bound" that is attached hereto as Exhibit A.

20. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
MATERIAL

21 When a producing party gives notice to receiving parties that certain inadvertently
22 produced material is subject to a claim of privilege or other protection, the obligations of the
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1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
2 provision is not intended to modify whatever procedure may be established in an e-discovery
3 order or agreement that provides for production without prior privilege review. The parties agree
4 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

5 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

6 Within 60 days after the termination of this action, including all appeals, each receiving
7 party must return all Protected Material to the producing party, including all copies, extracts and
8 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

9 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
10 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
11 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
work product, even if such materials contain confidential material.

12 The confidentiality obligations imposed by this agreement shall remain in effect until a
13 designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: November 15, 2018

3 _____
4 */s Brian Guthrie* _____
5 Ashbaugh Beal
6 Attorneys for SCI Infrastructure, LLC

7 DATED: November 15, 2018

8 _____
9 */s David Burkett* _____
10 David Burkett
11 Attorney for Pinnacle Crushing and
12 Construction, LLC

13 DATED: November 15, 2018

14 _____
15 */s Anne Marie Tavella* _____
16 Davis Wright Tremaine LLP
17 Attorneys for Cherokee General Corporation
18 and Hartford Fire Insurance Company

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that, pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: November 15, 2018

The Honorable James Robart
United States District Court Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on _____ in the case of *United States ex rel. Pinnacle Crushing & Construction, LLC, et al. v. Hartford Fire Insurance Company, et al.*, No. 2:17-cv-01908-JLR. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature:

Signature: _____

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